

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JESSE STEPHEN KING,

Plaintiff,

v.

DARREL ADAMS, et al.,

Defendants.

CASE NO. 1:01-cv-05189-OWW-SMS PC

ORDER DENYING PLAINTIFF'S MOTION
TO VACATE JUDGMENT

(ECF No. 49)

Plaintiff Jesse Stephen King ("Plaintiff"), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on February 16, 2001. On November 15, 2001, this action was dismissed, without prejudice, for failure to exhaust administrative remedies. (ECF No. 28.) On December 6, 2001, Plaintiff filed a notice of appeal. (ECF No. 33.) The appeal was dismissed for Plaintiff's failure to pay the filing fee on May 3, 2003. On July 11, 2011, Plaintiff filed a motion to vacate the judgment because prison officials obstructed his attempts to exhaust his administrative remedies. (ECF No. 49.)

Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, "[o]n motion and just terms, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence . . . (3) fraud . . .; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; . . . or (6) any other reason that justifies relief." Fed. R. Civ. Proc. 60(b). "A motion under Rule 60(b) must be made within a reasonable time" and when relief is requested under the first three

1 grounds for relief “no more than a year after the entry of the judgment. . . .” Fed R. Civ. Proc.
2 60(c)(1). Plaintiff’s motion, brought more than eight years after the entry of judgment is untimely.
3 Scott v. Younger, 739 F.2d 1464, 1466 (9th 1984).

4 Accordingly, Plaintiff’s motion to vacate the judgement is HEREBY DENIED as untimely.

5 IT IS SO ORDERED.

6 **Dated: July 14, 2011**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE